Air transport between the Community and third countries: negotiation and implementation of air service agreements

2003/0044(COD) - 05/12/2003 - Council position

In its common position, the Council maintained the basic structure of the Commission's proposal, in particular notification of an intention to negotiate in Article 1 and a system for approving the outcome of negotiations in Article 4, although significant changes were made to refine and reinforce the legal framework. These changes aim at improving the workability of the Commission's proposal by making the conditions under which Member States are authorised to negotiate and conclude agreements that touch on matters of Community competence more specific. Three changes should be particularly stressed in this regard: - the scope of the draft Regulation was broadened so as to also include cases where Member States negotiate with a third country with which the Commission is also negotiating on behalf of the Community. Through this extension of scope, the Council was able to secure acceptance of the notion of parallel negotiations at Community and national level. This, inter alia, permits routine updating of existing bilateral agreements pending the outcome of Community level negotiations; - a fast track procedure, whereby Member States are authorised automatically to conclude agreements on behalf of the Community if they include certain standard clauses, has been introduced; - the principle that Member States may provisionally apply agreements pending the outcome of Community verification procedures has been introduced. Under the new Article 4, the Commission retains powers to block agreements where negotiations have not resulted in the inclusion of standard Community clauses (and the agreements might consequently infringe Community law), or in cases where the Commission is itself actively negotiating with the third country concerned on the basis of a mandate granted by the Council. In both situations the Commission decides together with an advisory committee of Member States. Several other less fundamental, but nevertheless significant, changes to the Commission's proposal have been introduced. These include the following: - the obligation on Member States in Article 1 to notify each other regarding forthcoming negotiations has been removed. Now the Commission is the central repository of such notifications which it must make available to other Member States. This is a less bureaucratic and more streamlined system; - the text of Article 2 has been broadened to require equal treatment of all interested parties (not only air carriers) as regards their association with negotiations taking place; - the intention behind Article 3, the prohibition of more restrictive arrangements, has been clarified; - a timescale for publication of procedures has been added in Article 6. (Previously there was a deadline only for publication of changes, but not of the procedures themselves); - regarding confidentiality (Article 8, formerly Article 7), the intention underlying the Commission's proposal - that confidentiality restrictions could prevent notifications being passed on to other Member States - has been retained but clarified further; - the relevant standard provisions regarding the airport of Gibraltar have been introduced. Out of the 17 amendments adopted by the European Parliament, theCouncil fully incorporated three of them into its common position and four of them in part or in principle. These amendments mainly correspond to those accepted in a similar fashion by the Commission. In light of these amendments, the common position - aims to strengthening the legal framework set out by this draft regulation. It further specifies both the type of agreements or related documents which are covered by this draft regulation , and the Member States'obligations when Community negotiations are actively underway; - clarifies the obligation on Member States to notify the Commission of their planned negotiations, and thus integrates this Parliament amendment in principle. Only the Commission must be notified by a Member State which intends to enter into negotiations, the other Member States having the possibility to request copy of this notification to the Commission. A special procedure is also set out in case of exceptional circumstances; - seeks to clarify that any agreement which would reduce the number of Community carriers which may, in accordance with existing arrangements, be designated to provide air services between the territory of a Member State and a third country, is prohibited.